

REMARKS:

Claims 1-144 are pending and under consideration. Claim 7 is hereby cancelled. Claims 1, 2, 3, 84 and 85 are hereby amended. Claims 49-71 have been allowed, which is acknowledged with appreciation. The amendments are not intended to restrict the range of equivalency that may still apply unless so stated herein.

Claim Rejections under 35 U.S.C. §112

The Examiner's rejection of dependent claim 15 as failing to further limit claim 14 (from which it depends), is respectfully traversed. Note that in claim 14 "*a* starting position" in another race is merely "based upon the finishing position" in the race just completed. It could therefore be an improved position. For instance, the racer finished 3rd, and moves up to 2nd to start the next race. Claim 15, however, narrows Claim 14 by establishing that the starting position "*is* the finishing position" of the race just completed. Therefore, based upon finishing 3rd, for instance, the racer starts in 3rd for the next race. The claims are therefore different, and properly dependent. The same analysis applies to Claims 21 and 22 (and also 90 and 91, for that matter) as the Examiner has aptly noted. Reconsideration is requested.

Claim Rejections under 35 U.S.C. §103

The Examiner's rejection of Claims 1-5, 8-11, 17-20, 24-26, 33-36, 40-42, 82, 84-87, 89, 92-96, 99-102, 104-107, 109, 112-115, 117, 124, 128 and 130-143¹ under 35 U.S.C. § 103(a) as being unpatentable over Olsen ("Olsen"), U.S. Patent No. 6,210,275 B1 in view of Breslow et al.

¹ Claim 144 was not addressed in the body of the Office Action, but was indicated as rejected on the transmittal page. Applicants have nonetheless treated it herein.

("Breslow"), U.S. Patent No. 4,710,8731 is respectfully traversed for at least the reasons given below.

The foregoing Claims introduce a new method of playing a game, where a race game has a raceway and a plurality of racers which traverse that raceway. The present invention describes a method of playing a wagering game wherein the wagers are all placed initially, including player selection of a consecutive number of races desired to be run. The player also selects a racer as the player's racer. A race is initiated and racers are assigned finishing positions at the end of the race. Play continues with another race, provided the player's racer has not met a predetermined game ending criterion (such as the player's racer has been eliminated, for example, by coming in last place; a predetermined number of racers remains; or a predetermined number of races have been completed) *and* the player has wagered on the next race. Thus, in a principal aspect of the invention, achieving play of the second stage is dependent on the outcome condition of the first stage game and on the wager the player initially placed.

There are other novel aspects of the invention besides the foregoing, some of which will be discussed herein. Others will not be discussed at this time, however, since allowability for other reasons will be apparent. Additional novel features touched upon herein will nonetheless include the payouts based upon the amount of a respective wager at a respective stage, and can include increasing the payout by a multiplier at a respective stage, with the multiplier increasing for each successive stage; swimmers (in an aquatic environment) are eliminated by being eaten; and cars explode for elimination.

In contrast to Applicants' independent claims, Olsen does not teach or suggest an initial wager including player selection of a consecutive number of races desired to be run. Olsen

discloses *a bonus* game that is triggered when the bonus pool meets or exceeds a predetermined value. Column 10, lines 49-51. The bonus mode continues until there is a winner. Column 11, lines 5-10. The bonus game consists of successive horse races where each successive game reduces the number of possible outcomes by reducing *the number* of horses in each successive race. Column 4, lines 32-37. Olsen's bonus award may *never* be triggered. Olsen does not disclose advancement to the next race in the bonus round only if the player's racer has not been eliminated *and* the player has previously wagered on the next race. In fact, Olsen teaches just the opposite. Olsen teaches successive races of the bonus game occur no matter what, except if a player wins, in which event the successive rounds immediately terminate. There is no forfeiture of wagers on subsequent races by Olsen. The Olsen bonus round, in one variant, may or may not occur. But this is not in any way tied to success in an earlier race. Column 4, lines 40-43. Further, the jackpots in Olsen do not change in value from race to race. Olsen does not teach or suggest increasingly higher payouts for at least some races completed after a first race.

Breslow does not teach or suggest an initial wager including player selection of a consecutive number of races desired to be run. Breslow discloses a game similar to the classic "musical chairs". For example, there are six cars and five parking spaces. The players move their respective cars about the parking lot via a joystick to attempt to position their car in an empty parking space. Column 4, lines 42-50. The player in Breslow does not place a wager for successive rounds of play prior to game play. The player continues to each successive round if a parking space is obtained in the previous round. Column 4, line 67 - Column 5, line 2. Otherwise, the player is eliminated if a parking space is not obtained. Column 4, lines 63-65. In contrast to the Applicants' foregoing Claims, Breslow does not teach or suggest advancement to a successive

stage of the game if the player's racer has not been eliminated *and* a wager for successive rounds of play placed by the player prior to gameplay. In fact, Breslow does not disclose a wagering game at all.

In contrast to the Applicants' foregoing Claims, Olsen and Breslow do not disclose or suggest continuing play with another race, provided the player's racer has not met a predetermined game ending criterion (such as the player's racer has been eliminated, for example, by coming in last place; a predetermined number of racers remains; or a predetermined number of races have been completed) *and* the player has wagered on the next race.

The Examiner has already recognized the novelty and unobviousness of Applicants' invention in allowing independent Claim 49, for instance. The reasons for allowance acknowledge that the prior art does not teach a racing game in which a player's wager includes an input as to the number of consecutive races desired to be completed up to a preset maximum number (O.A. p. 10).

In reviewing Claims 4, 9, 19, 24, 35, 40, 86, 93, 99, 112 and 114, the Examiner will note that these claims should also be allowable for the same reasons as Claim 49, which was apparently not appreciated on the previous Action, but should be evident now. Accordingly, Claims 4-48, 72-83 and 86-144 should be allowable. In the same vein, Claims 1, 2, 3, 84 and 85 have been amended to now clearly recite the aspects of Applicants' invention that the Examiner has indicated as rendering them allowable.

To further distinguish Applicants' Claims, elimination of a racer occurs through an explosive destruction executed at the *end* of the game. Pole Position discloses explosions of cars upon a collision. The present invention does not claim collisions with other racers in the course of

a race, but instead an explosive destruction at the end of a race. The prior art does not teach or suggest an explosive destruction executed at the end of the race. Claims 6, 14-16, 21-23, 37-39, 83, 90, 91, 97, 98, 110, 111, 116, 125 and 129 should therefore be allowable for this further reason.

Dependent Claims 80, 81, 122, 123, 126 and 127 recite elimination of a swimmer through depiction of a sea creature eating the swimmer at the end of a race. Atari's Jungle King does not disclose a swimmer racing against other swimmers, but a solo swimmer. This prior art thus does not teach or suggest a swimmer being eaten by a sea creature while racing against one or more other swimmers, at the end of a race.

To recap, dependent Claims 4-6, 8, 10-23, 25-39, 41-48, 72-83, 87-92, 94-98, 100-111 and 113-144 contain all of the limitations of independent Claims 1, 2, 3, 9, 24, 40, 84, 85, 86, 93, 99 and 112. These independent claims are not obvious in view of any combination of the cited references, for the reasons stated herein. In addition, dependent claims include an explosive destruction executed at the end of the race as well as a sea creature eating a swimmer at the end of the race that are further limitations such that any combination of the cited prior art do not teach or suggest the claimed invention as a whole. Other dependent claims further include additional patentable features, but discussion thereof is obviated by the allowability of their base claims.

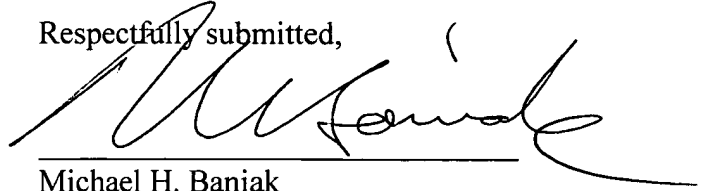
A Notice of Allowability is solicited.

Appl. No. 10/092,119
Amdt. dated January 23, 2004
Reply to Office Action of Sep. 25, 2003

January 23, 2004

BANIAK PINE & GANNON
150 N. Wacker Drive, Suite 1200
Chicago, Illinois 60606
(312) 673-0360

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael H. Baniak", written over a horizontal line.

Michael H. Baniak
Registration No. 30,608
Attorney for Applicants